



# Commonwealth of Kentucky

## MASTER AGREEMENT

### IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

<b>Doc Description:</b> Eq Rental Portable Traffic Signals D-3		
<b>Doc ID No:</b> MA 605 1500000222 1	<b>Proc Folder:</b> 3432943	
<b>Procurement Type:</b> Standard Services		
<b>Effective Date:</b> 2014-07-17	<b>Expiration Date:</b> 2015-06-30	<b>Not To Exceed Amount</b>
<b>Administered By:</b> NANCY ALBRIGHT		<b>Cited Authority:</b> FAP111-35-00-S
<b>Telephone:</b> 502-564-4556		<b>Issued By:</b> LINDA SHINN
<b>V E N D O R</b> SAF-TI-CO, INC  2400 MILLERS LANE  LOUISVILLE KY 40216 US		

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Portable Traffic Signal Rental - Weekly-District 3	0	0.00	WK	1,330.00000	0.00	0.00

#### Extended Description

Vendor Rep: Don Freibert  
 Vendor Ph: 502-772-2511  
 Vendor Email: don@saftico.com

The Portable Traffic Signal System shall meet all requirements of the current edition of the MUTCD.

The system shall consist of two (2) trailers (Master and Slave). Each trailer is battery operated with solar assist.

This contract shall include the set up of the signal and pick up of the signal system by the vendor as requested by the department.

Vendor may be required to provide multiple systems.

Vendor shall be able to provide equipment within 1 calendar day following notification by District personnel.

To be ADDCO PTS-2000 with Galaxy Controller

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Portable Traffic Signal Rental - Monthly - District 3	0	0.00	MO	3,950.00000	0.00	0.00

#### Extended Description

See line 1.

To be ADDCO PTS-2000 with Galaxy Controller

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## Section 1—Specifications – Service

### 1.00 - Portable Traffic Control System Specification

#### General

The portable traffic control system shall consist of towable, trailer-mounted, self-contained units. Each unit shall be equipped with two LED traffic signals and designed to utilize solar electric modules with storage batteries as the primary power source for the traffic signals.

#### Environmental Conditions

Unless specified otherwise, all components shall be constructed to meet or exceed the following environmental conditions:

Temperature Range: -40F to 160F.

Vibration: Components shall survive all vibration in any axis normally encountered during transportation.

Humidity: 0% to 100%.

Wind: Each unit shall be capable of remaining stable and operating in wind up to 80 mph.

#### Controller

Each unit shall include a solid-state, digital, micro-processor based, traffic controller capable of operating the signals in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) requirements and NEMA standard TS1. The controller shall not be able to be powered unless the conflict monitor is installed and functioning properly. The controller shall be capable of fixed time, traffic actuated and manual control operation.

The controller shall provide user-selected standby modes of red, red flash and yellow flash mode. The default standby mode shall be red flash. The controller shall provide built-in night dimming capability.

#### Conflict Monitor

Each system shall incorporate a conflict monitor to detect the presence of conflicting indications, the absence of proper voltages, and proper operation of the controller. Upon detection of a conflict or loss of communication, the conflict monitor shall transfer all signals into standby mode. The conflict monitor shall conform to NEMA standard TS1.

#### Vehicle Detector

Each unit shall have a microwave vehicle detector mounted on it. The detector shall be capable of detecting up to two lanes and have a minimum detection range of 350 feet.

#### Enclosures

Control equipment and battery enclosures shall be secure from weather, theft and vandalism. An integral rigid doorstop shall be included in each enclosure so that the door can be fixed in the open position. Each door shall be secured with a standard traffic signal controller cabinet Corbin # 2 lock. The keyhole for the lock shall have a cover attached to the door with a single rivet.

Each battery enclosure shall have a minimum of one-half inch (1/2") of insulating sheeting around the

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battery to minimize heat transfer between the battery and the enclosure wall. Each battery enclosure shall also be equipped to keep the batteries securely in place during transport.

### **Interconnection**

Units in a system shall be capable of being communicating with one another via hardwire and radio interconnect. Radio interconnect shall include spread spectrum radio modems, cables, between units.

### **Power Supply**

Primary power shall be solar based. Each unit shall contain a solar cell system for battery charging. The number of cells shall be determined by the wattage of two, three-section signal indications, operating twenty-four hours per day, seven days per week, and the average hours of sun per day (winter) in the state of Kentucky. These cells shall feature an antireflective coating and low iron glass covering. The cells shall be encapsulated to protect them from the environment. Each module shall provide a weather-tight method for connecting the array output cable to the module terminals. The modules shall be designed to provide rated power output for a minimum of 15 years. The system shall be designed for operation at an average monthly insolation on a horizontal surface and average monthly temperature for use anywhere in the state.

### **Batteries**

The unit shall be designed to receive input power of 12 volts DC from a bank of batteries. Batteries shall be low self-discharging, leak proof, deep cycle, lead acid absorbed glass mat (AGM) batteries. The maximum current drain from the battery bank shall be five amps. The battery bank shall be recharged through the utilization of a solar panel array producing a minimum of 450 watts at a peak voltage of 17V. Additionally, the battery bank shall contain an auxiliary battery charger allowing batteries to be recharged utilizing 120V AC electrical service. Each unit shall also be capable of operating with a 120V AC electrical service from a generator or other electrical source. The unit shall be capable of continuous isolated battery operation (no sun) for a period of not less than 20 days when starting from a fully charged battery pack. The solar charging system shall incorporate an automatic charge controller to prevent overcharging of the battery bank and disconnect the solar array during use of the auxiliary battery charger.

### **Traffic Signals**

Each vehicular traffic signal head shall consist of three 22 watt LED modules with 12" diameter red, yellow and green indications. Signals shall conform to the MUTCD, and to the standards "Vehicle Traffic Control Signal Heads" (VTCSH) and "Vehicle Traffic Control Signal Heads Part 2: Light Emitting Diode (LED) Vehicle Signal Modules (Interim)" from the ITE Publication "Equipment and Material Standards of the Institute of Transportation Engineers".

One signal head shall be mounted on a mast arm that positions the signal over the near travel lane at a minimum height of 17' from the bottom of the signal head to the top of the pavement. One signal shall be side mounted outside the travel lane at a minimum height of 8' from the bottom of the signal head to the top of the adjacent travel lane. All signal heads shall be equipped with visors.

LED signal modules shall be designed to be compatible with signal housings built to the requirements of ITE's VTCSH standards. Each module shall be a single, self-contained, sealed unit. The LEDs shall utilize AlInGaP (Aluminum indium gallium phosphorus) technology for red and yellow indications and InGaN (Indium Gallium Nitride) for green indications, and shall be rated for 100,000 hours of continuous operation. The LED module shall be designed to provide a uniform light output throughout its life.

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### **Towable Trailer**

The portable traffic control system shall be trailer-mounted. Each trailer shall be specifically manufactured for transporting traffic signals and equipment necessary for operation at highway speeds. The trailer shall have a towing extension with a jack stand for leveling of unit. The trailer shall be equipped with four stabilizing/leveling jacks (one jack on each corner). The trailer shall have safety chains with hooks and a pintle eye for attaching to tow vehicle. The trailer shall have antennas and other hardware required for minimum 1200 baud radio data communication tail lights, brake lights, and turn signals and a cable with a connector compatible with other trailers and towing vehicles.

Each trailer shall be designed to allow one vehicle to legally tow two trailer units in tandem on the public highway system. All hardware, wiring, etc. required to accomplish this shall be provided.

### **Paint**

All exterior metal surfaces of the trailer, enclosures, supports, etc. shall be cleaned, primed and finished with Safety Orange paint.

### **Training**

A qualified representative shall provide a minimum of one day of instruction to KYTC personnel in the operation of units rented under this specification. The training shall be conducted (free of any charge) by the bidder or an authorized representative at a mutually acceptable location in Kentucky.

### **Equipment Failure Warning System**

The system shall employ an equipment failure warning system with an auto dialer that is capable of contacting a pager or other programmed phone number(s). The warning system shall be programmable to respond to any or all of the following conditions:

Batteries have discharged below a programmed threshold.

Signal system is in fail mode.

There is a loss of power.

**The system shall be equipped with diagnostic capabilities in the event of a system default. The system must have the capability of identifying the default in a manner that will expedite the return to full operational mode.**

### **Remote Control Operation**

Wireless remote control used to increment the lights

### **DISPLAYS:**

A display to show the status of charging and low voltage dropout shall be provided.

### **DOCUMENTATION:**

**The following information must be provided with the bid:**

**Sizing report which shall include the following information:**

**The array to load ratio**

**The type of battery to be utilized**

**Electrical configuration of the system**

**Data sheet for the photovoltaic module to be used in the system.**

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The successful bidder shall furnish the following with each unit delivered:

Operator's Manual  
Parts Book  
Troubleshooting Guide  
Wiring Diagrams

### **1.01— General Service Requirements**

The Department is only obligated to purchase the quantity required by the project as determined by Department personnel.

The rental rate is to be paid by the Transportation Cabinet from the time the equipment is received by Department personnel until verbal notification to the vendor that the equipment is ready for pickup.

Rental Rates are to be based on the following maximums:

Week = 50 machine hours or 7 calendar days  
Month = 200 machine hours or 28 calendar days

The equipment will be delivered, in good mechanical working condition, to the place of beginning of operation with no expense to the Transportation Cabinet, and upon completion of the work the equipment will be transported away from the place of operations without expense to the Transportation Cabinet.

The vendor shall be responsible for all tolls for his equipment when the travel involves a toll road.

The equipment will be under the supervision of the Transportation Cabinet, who shall direct the time and place for the use of such equipment.

The Department of Highways will provide fuel and lubrication necessary during the rental period.

In the event of breakdown, the vendor is to provide repair or replacement of that equipment within two (2) working days. No rent will be paid during the time equipment is inoperable. If satisfactory repair or replacement has not been made within the two days, the state reserves the right to make the purchase on the open market, with that amount over the rental rate charged back to the vendor.

The Transportation Cabinet and all its officers, agents and employees shall be held harmless from all suits, actions, or claims of any character brought on account of any injury or damages sustained by any person or property from any negligence in performance of the above named equipment. Nothing in this proposal is to be construed as any agency relationship between the parties.

The Department will provide traffic control necessary for safe operation.

### **Section 2—Terms and Conditions of the Master Agreement**

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## **2.00—Scope of the Contract**

The KYTC Division of Purchases issues this Master Agreement for:

### **Eq Rental Portable Traffic Signals D-3**

## **2.01—Contract Components and Order of Precedence**

The Commonwealth's acceptance of the offer indicated by the issuance of an Award by the KYTC Division of Purchases shall create a valid Master Agreement consisting of the following:

1. The written Master Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. Any provisions of the Solicitation and all attachments thereto;
4. The Bidder's response to the Solicitation, and
5. The Kentucky Revised Statutes KRS 45A.

In the event of an inconsistency between provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Specifications; (b) other provisions of the Solicitation, whether incorporated by reference or otherwise; (c) Contract or Master Agreement Terms and Conditions; (d) FAP 110-10-00 – General Conditions and Instructions for Solicitations and Contracts.

## **2.02—Initial Contract Period**

The Master Agreement will be for the initial period of upon award and expires June 30, 2015.

## **2.03—Optional Renewal Period**

This Master Agreement may be extended at the completion of the initial contract period for four (4) additional one-year periods. This extension must have the written approval of the vendor and the KYTC Division of Purchases. The Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

## **2.04—Divisions/Agencies to Be Served**

This contract shall be for use by the following Divisions/Agencies of the Kentucky Transportation Cabinet:

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### Department of Highway Districts 3

No shipments or services are authorized until an official Delivery Order has been fully processed by an authorized agency.

#### 2.05—Quantity Basis of Contract

This Master Agreement has no guarantee of any specific quantity, and the State is obligated only to buy that quantity which is needed by its agencies.

#### 2.06—Exception to Required Use of Contract

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to acquire large requirements through other competitive processes.

#### 2.07—Basis of Price Revisions

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by the Master Agreement shall be firm for the contract period subject to the following:

- A. Price Increases: A price increase will not be allowed during the first six (6) months of the contract. Only one price increase will be allowed during the contract period. The price increase must be based on industry wide price changes. The contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The KYTC Division of Purchases may request additional information or justification. If the price increase is denied, the contract holder may withdraw from the contract without prejudice upon written notice and approval by the KYTC Division of Purchases. Notice of withdrawal must be provided a minimum of forty-five (45) days prior to the effective date.
- B. Price Decreases: The contract price shall be reduced to reflect any industry wide price decreases. The contract holder is required to furnish the KYTC Division of Purchases with notice of any price decreases as soon as such decreases are available.
- C. Extended Contract Periods: If the contract provides for an optional renewal period, a price adjustment may be granted at the time the contract is renewed, subject to price increase justification as required "A. Price Increases". One (1) additional price increase may be granted during the extended contract period. This price increase will not be allowed during the first six (6) months of the extended contract period and will be subject to the conditions in "A" above.

#### 2.08—Addition or Deletion of Items or Services

The KYTC Division of Purchases reserves the right to add new and similar items, with the consent of the

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vendor, to the contract. If an addition is agreeable to both parties, the KYTC Division of Purchases will issue a Modification. Until such time as the vendor receives a Modification, the vendor shall not accept Delivery Orders from any agency referencing such items or services.

## **2.09—Changes and Modifications to the Contract**

During the period of the contract, a modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from the KYTC Division of Purchases. If the contractor finds at any time that existing conditions make modification in requirements necessary, the contractor shall report the matter promptly to the KYTC Division of Purchases for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

## **2.10— Reduction in Contract Worker Hours/Employee Furlough**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document. The reduction of hours may be applicable to those contract workers that provide a service in state government buildings on a regularly scheduled basis, such as janitorial, security guard, mailing services, and food services. These services will be reduced in hours only in those circumstances where the buildings will be closed. A notification will be sent to the contract holder in advance of any scheduled reduction in contract hours.

## **2.11—Equipment**

All equipment must be new and current model(s). The Commonwealth recognizes the rapid advancement of technology. If the vendor can provide new equipment of advanced technology after the award of the contract, the Commonwealth and the bidder may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award contract.

## **2.12—Basis of Shipment**

All shipments shall be F.O.B. Destination to the receiving agency. The vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency. The responsibility for filing freight claims lies with the vendor.

## **2.13—Notices**

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Master Agreement shall be in writing.

After the Award, all programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Division of Purchases.

T.J. Gilpin



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Division of Maintenance  
Kentucky Transportation Cabinet  
Phone: 502-352-3262  
Email: [Thomas.gilpin@ky.gov](mailto:Thomas.gilpin@ky.gov)

With copy to:

Linda Shinn  
Division of Purchases  
Kentucky Transportation Cabinet  
Phone: 502-564-4630  
E-mail: [Linda.Shinn@ky.gov](mailto:Linda.Shinn@ky.gov)

After the Award, all communications of a contractual or legal nature are to be made to the KYTC Division of Purchases.

#### **2.14—Deliveries**

Vendor shall be able to provide equipment within **1** calendar days following notification by District personnel.

Should vendor fail to make delivery within the guaranteed response period, they agree and further authorize the Commonwealth to deduct damages from the invoice in the amount of **\$100.00 per day** for each day the service is withheld.

#### **2.15—Inspection**

All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the vendor's expense.

#### **2.16—Invoices**

Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

- a. Contract and order number;
- b. Item numbers;
- c. Description of supplies or services;
- d. Sizes;

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- e. Quantities
- f. Unit prices; and
- g. Extended totals.

## 2.17—Payments

A bill shall be paid within 30 working days of either the receipt of correct invoice, or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

## 2.18—Post Contract Agreements

The Master Agreement shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this contract. The Commonwealth shall not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of the contract. Any such documents so obtained will be non-binding on the State and be cause for breach of contract.

## 2.19—Subcontracts

The vendor shall notify the Commonwealth of any planned use of subcontractors in regards to the resulting contract. If the KYTC Division of Purchases is provided evidence of the vendor making such an arrangement without submitting the proper information prior to use of the subcontractor, the contract may be cancelled immediately.

This provision will not be taken as requiring the approval of contracts of employment between the vendor and their personnel.

All payments will be made directly to the contracted vendor. It is the vendor's responsibility to make payment to the subcontract. Payments shall not be made to the subcontractor by the Commonwealth. Subcontractors having nonpayment issues that could not be resolved with the vendor should report in detail these incidents to the buyer of record for this solicitation.

The Vendor shall ensure that all contractors or subcontractors comply with all applicable Federal, State, and Local laws, regulation, mandates, and terms of this solicitation and resulting contract.

Additionally, the Vendor shall not contract with any contractor or subcontractor that utilizes the services of illegal immigrants. Attached is the required affidavit regarding contractor or subcontractor employees.

The vendor is responsible for supplying the subcontractor with a copy of any applicable prevailing wage rates and the terms and conditions of the solicitation.

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## 2.20-Service Performance

All services performed under contract shall be in accordance with the terms and conditions of the contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

Deviations of services performed will not be made without the written approval of the KYTC Division of Purchases. Problems that arise under any aspect of performance should first be resolved between the vendor and the agency. If such problems and/or disagreements cannot be resolved they should be referred to the KYTC Division of Purchases for mediation.

## 2.21—Assignment

The vendor shall not assign this Master Agreement in whole or in part to another vendor at any time during the initial or optional renewal terms of the contract, without the consent, guidance and approval of the Commonwealth. Any assignment hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Any purported assignment without this consent shall be null and void.

## 2.22—Termination of Contracts

A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

## 2.23— Endorsements

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

## 2.24-Registration with the Secretary of State by a Foreign Entity

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate

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as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

## 2.25—EEO ACT

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act, if applicable.

1. Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.
2. Vendors/Contractors must submit the following documents in accordance with the requirements of the solicitation—EEO-1: Employer Information Report, Affidavit of Intent to Comply and Subcontractor Report or a copy of the Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.
3. Vendors/Contractors may obtain copies of the required EEO documents from the Finance and Administration Cabinet's Web page at the following address:  
<http://finance.ky.gov/SERVICES/FORMS/Pages/default.aspx>  
**Scroll down to the section labeled procurement.**
4. Vendors/Contractors must advise each subcontractor/subvendor—with a subcontract of more than \$500,000—of the subcontractor's obligation to comply with the KY EEO Act. Further, Vendors/Contractors are responsible for compiling EEO documentation from their subcontractors/subvendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance. (Note: contracts below the second tier are exempt from EEO reporting.)
5. Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. Further, alternate versions of the required documents will not be accepted or processed.
6. Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and/or documentation and to conduct on-site monitoring reviews of project sites and/or business facilities at any point for the duration of any contract which exceeds \$500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.

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7. All questions regarding EEO forms or contract compliance issues must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: [Finance.ContractCompliance@ky.gov](mailto:Finance.ContractCompliance@ky.gov) or via telephone: (502) 564-2874.

## **2.26—Prevailing Wage**

Not Applicable

## **2.27—Kentucky Sales and Use Taxes**

Sales of tangible personal property or services to the State of Kentucky and its agencies are not subject to state sales or use taxes.

## **2.28—Extension Period**

This contract may be extended at the termination of all contract renewal periods for additional time not to exceed **90 days**. This extension must be accompanied by the written approval of the vendor and the Division of Purchases

## **2.29—Extending Master Agreement to Other Agencies**

The Division of Purchases reserves the right, with the consent of the vendor, to offer this master agreement to other state agencies or political subdivisions that may have need for the product (s).

## **2.30—Access to Records**

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

## **2.31—Records Retention**

The Finance and Administration Cabinet may inspect the place of business of the Vendor or any sub Vendor under the master Agreement contract awarded or to be awarded by the Commonwealth. In

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accordance with KRS 45A.150, the Finance and Administration Cabinet may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.120 at any time until three years from the date of final payment under the prime contract, and by any subcontractor for a period of three years from the date of final payment under the subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by any subcontractor for a period of three years from the date of final payment under the subcontract. The Finance and Administration Cabinet shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this provision shall not limit the right to audit stated above. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract. The contractor shall place such the same audit requirement in any agreement it may have with a subcontractor under this contract.

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**SECRETARY'S ORDER 11-004**

FINANCE AND ADMINISTRATION CABINET

**Vendor Document Disclosure**

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

**WHEREAS**, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

**NOW, THEREFORE**, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.
- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

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- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.